

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ELIZABETH MARTE,**  
**Petitioner,**

**vs.**

**FDC-PHILADELPHIA,**  
**Respondent.**

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**C.A. No. 06-140 Erie**  
**District Judge McLaughlin**  
**Magistrate Judge Baxter**

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

\_\_\_\_\_ It is respectfully recommended that the instant petition for writ of habeas corpus be transferred to the Eastern District of Pennsylvania.

**II. REPORT**

\_\_\_\_\_ This is a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, filed by a federal prisoner presently incarcerated at the Federal Detention Center at Philadelphia in the Eastern District of Pennsylvania.

In his petition, Petitioner Elizabeth Marte claims that she is entitled to receive 54 days of good time credit for each year of her imprisonment pursuant to 18 U.S.C. § 3624(b). Petitioner is currently serving a sentence of 57 months of imprisonment for Conspiracy to Possess with Intent to Distribute 500 grams of P. Cocaine/Base.. Her projected release date is December 31, 2007.

As a general proposition “matters concerning the conditions of confinement or the execution of a sentence are within the subject matter jurisdiction of the court presiding in the district in which a prisoner is incarcerated.” DeSimone v. Lacy, 805 F.2d 321, 323 (8th Cir. 1986) citing Lee v. United States, 501 F.2d 494, 500 (8th Cir. 1974).

In the case at bar, although Petitioner was tried and convicted of her offense in this

district, she is not challenging the imposition of her sentence but, rather, the manner in which her sentence is being executed. As a result, the court having subject matter jurisdiction over this matter is the court presiding in the district in which Petitioner is incarcerated. In this case, that court would be the United States District Court for the Eastern District of Pennsylvania.

### **III. CONCLUSION**

It is respectfully recommended that the petition for writ of habeas corpus be transferred to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 2241.

In accordance with the Magistrate Act, 28 U.S.C. § 636 (b)(1) (B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, the parties are allowed ten days from the date of service to file written objections to this Report and Recommendation. Any party opposing the objections shall have seven days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

S/Susan Paradise Baxter  
SUSAN PARADISE BAXTER  
Chief U.S. Magistrate Judge

Dated: June 23, 2006

cc: The Honorable Sean J. McLaughlin  
United States District Judge